

Application No. 09/942,893  
Preliminary Amendment dated December 13, 2005  
Reply to Office Action of June 13, 2005

**REMARKS**

**Status Of Application**

Claims 1-20 are pending in the application; the status of the claims is as follows:

Claims 1, 3, 4, 13, 15, and 16 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,801,251 B1 to Kawaoka et al. (“Kawaoka”).

Claims 8-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,907,353 to Okauchi (“Okauchi”).

Claims 2 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka in view of U.S. Patent No. 6,122,411 to Shen et al. (“Shen”).

Claims 5, 6, 17, and 18 rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka in view of Okauchi.

Claims 7 and 19 rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka, Okauchi, and further in view of Shen.

Claims 11 and 12 rejected under 35 U.S.C. § 103(a) as being unpatentable over Okauchi in view of Shen.

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka.

**Claim Amendments**

Claims 1, 8 and 13 have been amended to more particularly point out and distinctly claim the invention. These changes do not introduce any new matter.

**35 U.S.C. § 102(e) and (b) Rejections**

The rejection of claims 1, 3, 4, 13, 15, and 16 under 35 U.S.C. § 102(e) as being anticipated by Kawaoka is respectfully traversed based on the following.

Kawaoka shows a system for organizing a number of images in an image storage file (Fig. 3) stored in a memory card 5. Each image is associated with a seating code for an event, such as a wedding. The images can be synthesized into a composite image including images of multiple objects (A7, A8 and A9) as shown in Fig. 16 (col. 12, line 36 – col. 13, line 50).

In contrast to the cited references, claim 1 includes:

a controller which controls the image picked up by the image pick-up element so as to pick up a plurality of images of an object different in photographing condition;

an image memory which temporarily stores said plurality of images picked up by said image pick-up element;

an image-number-specifying device which specifies the number of images to be used for creating a composite image of the object from among said plurality of images stored in said image memory; and

an image composer which creates said composite image by composing images of said number of images specified by said image-number-specifying device.

Kawaoka does not show or suggest “a controller” that controls “the image pick-up element so as to pick up a plurality of images of an object” and “an image-number-specifying device which specifies the number of images to be used for creating a composite image of the object from among said plurality of images.” Rather, images of multiple objects in Kawaoka are composed into an image including separate image spaces (Fig. 15) for the images of each object. To anticipate, a reference must show, expressly or inherently, every limitation of the claim. MPEP §2131. Therefore, the cited references do not anticipate claim 1. Claims 3 and 4 are dependent upon claim 1, and thus include every limitation of claim 1. Therefore, claims 3 and 4 are also not anticipated by the cited references.

Also in contrast to the cited references, claim 13 includes:

- a controller which controls the image picked up by the image pick-up element so as to pick up a plurality of images of an object different in photographing condition;
- an image memory which temporarily stores said plurality of images picked up by said image pick-up element;
- an image specifying device which specifies images to be used for creating a composite image of the object from among said plurality of images stored in said image memory; and
- an image composer which creates said composite image by composing the images specified by said image specifying device.

As noted above, Kawaoka does not show or suggest “a controller” that controls “the image picked up by the image pick-up element so as to pick up a plurality of images of an object different in photographing condition” and “an image specifying device which specifies images to be used for creating a composite image of the object from among said plurality of images.” Therefore, the cited references do not anticipate claim 13. Claims 15 and 16 are dependent upon claim 13, and thus include every limitation of claim 13. Therefore, claims 15 and 16 are also not anticipated by the cited references.

Accordingly, it is respectfully requested that the rejection of claims 1, 3, 4, 13, 15, and 16 under 35 U.S.C. § 102(e) as being anticipated by Kawaoka be reconsidered and withdrawn.

The rejection of claims 8-10 under 35 U.S.C. § 102(b) as being anticipated by Okauchi, is respectfully traversed based on the following.

Okauchi shows a camera in which a ‘normal’ or ‘high-quality’ mode can be selected. In normal mode, a single image is picked up (col. 4, line 37 – col. 5, line 50). In high-quality mode multiple images are picked up (col. 5, line 51 – col. 9, line 67). Okauchi’s obtains the high-quality image by composing the images with a pixel shift method. In one case, Okauchi shows a process in which four images are picked up with images shifted by a 0.5-pixel pitch by controlling a variable-angle prism. In another case,

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nine images are picked up with images shifted by a 0.33-pixel pitch (col. 9, lines 21-51). The number of images picked up is determined by the peak value of the focus evaluation value (col. 9, lines 7-10). Therefore, the number of images picked up is determined by the physical characteristics of the lens during image pick up (col. 8, lines 59 – col. 9, line 6).

In contrast to the cited references, claim 8 includes:

a reception part for accepting a voluntary selection by a user between one of image quality priority and processing speed priority;  
an image-pick-up-number controller which variably sets a number of images to be picked up by said image pick-up element, said number being set according to accepted priority of image quality or processing speed; and  
an image composer which creates a composite image by composing the number of images set by said image-pick-up-number controller.

In Okauchi, when high-quality mode is selected, the number of images is determined by the physical characteristics of the lenses during image pick-up. In contrast, in claim 8 a user selects “between one of image quality priority and processing speed priority” and “an image-pick-up-number controller …variably sets a number of images to be picked up … according to accepted priority of image quality or processing speed.” Okauchi does not show or suggest these limitations. Therefore, the cited references do not show every limitation of claim 8 and claim 8 is not anticipated by the cited references. Claims 9 and 10 are dependent upon claim 8, and thus include every limitation of claim 8. Therefore, claims 9 and 10 are also not anticipated by the cited references.

Accordingly, it is respectfully requested that the rejection of claims 8-10 under 35 U.S.C. § 102(b) as being anticipated by Okauchi, be reconsidered and withdrawn.

### 35 U.S.C. § 103(a) Rejections

The rejection of claims 2 and 14 under 35 U.S.C. § 103(a), as being unpatentable over Kawaoka in view of Shen is respectfully traversed based on the following.

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As noted above, Kawaoka does not show or suggest picking-up multiple images of an object. Shen shows a camera capable of taking high resolution or low resolution images (col. 3, lines 6-10). If memory space is too low to take a high resolution picture (S112), it is determined if there is enough space for a low resolution picture (S118). If so, the resolution is automatically set to low resolution (S120). As with Kawaoka, Shen does not show or suggest picking-up multiple images of an object. To support a *prima facie* case for obviousness, the cited references, individually or in combination, must show or suggest every limitation of the claim. MPEP §2143.03. Claim 1 includes a controller that controls “an image pick-up element” to “pick up a plurality of images of an object different in photographing condition.” Claim 2 is dependent on claim 1 and thus includes every limitation of claim 1. Therefore, the cited references do not show or suggest every limitation of claim 2 and do not support a *prima facie* case for obviousness of claim 2. Similarly, claim 13 includes a controller that controls “an image pick-up element... to pick up a plurality of images of an object different in photographing condition.” Claim 14 is dependent upon claim 13. Therefore, the cited references do not support a *prima facie* case for obviousness of claim 14.

Accordingly, it is respectfully requested that the rejection of claims 2 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka in view of Shen be reconsidered and withdrawn.

The rejection of claims 5, 6, 17, and 18 under 35 U.S.C. § 103(a), as being unpatentable over Kawaoka in view of Okauchi, is respectfully traversed based on the following.

The Office Action states:

However Okauchi teaches a selector (figure 1, element 5) for specifying one of photographing modes like a 'high quality mode' and a 'normal quality mode' (col. 4 lines 28-36), which would inherently require it to give priority to higher quality during 'high quality mode' and priority to speed during 'normal quality mode' because the number of images to be

synthesized are lesser and a controller for automatically setting the number of images to be stored in said image memory depending on a specified photographing mode (col. 9 lines 21-32, col. 9 lines 52-62) (Either 4 or 9 images can be specified depending upon a focus evaluation mode as shown in figure 4) in order to obtain an image with higher quality than that obtained in the normal mode by extracting one or a plurality of images from an object image and synthesizing the extracted images.

Okauchi specifically contradicts this assertion. In normal mode, a single image is picked up (col. 4, line 37 – col. 5, line 50). Only in high-quality mode multiple images are picked up (col. 5, line 51 – col. 9, line 67). Furthermore, Okauchi's obtains the high-quality image by composing the images with a pixel shift method. The images stored in the memory of Kawaoka are of different objects. The combining the images of Kawaoka in the manner taught by Okauchi create a nonsensical mish-mash.

Neither Okauchi nor Kawaoka, individually or in combination, show or suggest “an image-number-specifying device which specifies the number of images to be used for creating a composite image of the object from among said plurality of images stored in said image memory” as provided in claim 1. Claims 5 and 6 are dependent upon claim 1, and thus include every limitation of claim 1. Therefore, the cited references, individually or in combination, do not show or suggest every limitation of claims 5 and 6. Similarly, claim 13 includes “an image specifying device which specifies images to be used for creating a composite image of the object from among said plurality of images stored in said image memory.” Claims 17 and 18 are dependent upon claim 13, and thus include every limitation of claim 13. Therefore, the cited references, individually or in combination, do not show or suggest every limitation of claims 17 and 18.

Accordingly, it is respectfully requested that the rejection of claims 5, 6, 17, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka in view of Okauchi, be reconsidered and withdrawn.

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The rejection of claims 7 and 19 under 35 U.S.C. § 103(a), as being unpatentable over Kawaoka, Okauchi, and further in view of Shen is respectfully traversed based on the following.

Neither Okauchi, Kawaoka nor Shen, individually or in combination, show or suggest “an image-number-specifying device which specifies the number of images to be used for creating a composite image of the object from among said plurality of images stored in said image memory” as provided in claim 1. Claim 7 is dependent upon claim 1, and thus includes every limitation of claim 1. Therefore, the cited references, individually or in combination, do not show or suggest every limitation of claim 1. Similarly, claim 13 includes “an image specifying device which specifies images to be used for creating a composite image of the object from among said plurality of images stored in said image memory.” Claim 19 is dependent upon claim 13, and thus includes every limitation of claim 13. Therefore, the cited references, individually or in combination, do not show or suggest every limitation of claim 19.

Accordingly, it is respectfully requested that the rejection of claims 7 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka Okauchi, and further in view of Shen be reconsidered and withdrawn.

The rejection of claims 11 and 12 under 35 U.S.C. § 103(a), as being unpatentable over Okauchi in view of Shen is respectfully traversed based on the following.

As noted above, Okauchi does not show or suggest an apparatus where a user selects “between one of image quality priority and processing speed priority” and “an image-pick-up-number controller … variably sets a number of images to be picked up … according to accepted priority of image quality or processing speed” as provided in claim 8. Shen merely shows that low resolution and high resolution modes can be selected (col. 3, lines 6-10). Each mode captures a single image. Thus, Shen also does not show or suggest the quoted limitation. Claims 11 and 12 are dependent upon claim 8 and thus

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include every limitation of claim 8. Therefore, the cited references, singularly or in combination, do not show or suggest every limitation of claims 11 and 12.

Accordingly, it is respectfully requested that the rejection of claims 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Okauchi in view of Shen be reconsidered and withdrawn.

The rejection of claim 20 under 35 U.S.C. § 103(a), as being unpatentable over Kawaoka is respectfully traversed based on the following.

As noted above, Kawaoka does not show or suggest “a controller” that controls “the image picked up by the image pick-up element so as to pick up a plurality of images of an object different in photographing condition” and “an image specifying device which specifies images to be used for creating a composite image of the object from among said plurality of images.” Claim 20 is dependent upon 13, and thus includes every limitation of claim 20. Therefore, the cited references do not show or suggest every limitation of claim 20 and the cited references do not support a *prima facie* case for obviousness of claim 20.

Accordingly, it is respectfully requested that the rejection of claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Kawaoka be reconsidered and withdrawn.

### **CONCLUSION**

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a

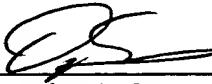
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fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

By:   
Douglas A. Sorensen  
Registration No. 31,570  
Attorney for Applicants

DAS/lb:jkk  
SIDLEY AUSTIN BROWN & WOOD LLP  
717 N. Harwood, Suite 3400  
Dallas, Texas 75201  
Direct: (214) 981-3482  
Main: (214) 981-3300  
Facsimile: (214) 981-3400  
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